# **Taxability of Lodging**

The Internal Revenue Service (IRS) under two Internal Revenue Codes (IRC) addresses the taxability of lodging. The first IRC that lodging is addressed under is IRC 119 (Meals or lodging furnished for the convenience of the employer); the second IRC that lodging is addressed under is IRC 132 (Certain fringe benefits). IRC 132 can be used only if the taxability of a particular benefit is not covered by another Code section. (Taxable Fringe Benefit Guide, pg 6)

### *IRC* 119 (Meals or lodging furnished for the convenience of the employer)

In order for lodging to be excludable from income under this code, the lodging must be (1) on the employer's premises, (2) for the convenience of the employer, and (3) a condition of employment.

- (1) On the employer's premises generally means the place of employment of the employee. (Reg. 1.119-1(c))
- (2) For the convenience of the employer lodging will be regarded as furnished to enable the employee properly to perform the duties of his employment when, for example, the lodging is furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required of him unless he is furnished such lodging. (Reg. 1.119-1(b))
- (3) A condition of employment lodging is a condition of employment if the employee is required to accept lodging in order to enable him or her to perform properly the duties of his employment. (Reg. 1.119-1(b))

#### IRC 132 (Certain fringe benefits)

Under IRC 132, there are several categories in which a fringe benefit may fall in order to be considered excludable from employee wages. The category that lodging falls under is "Working Condition Fringe Benefits". "Working Condition Fringe Benefits" are defined as "property or service provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167." (IRC 132(d)) The general rules for "Working Condition Fringe Benefits" are (1) benefit must relate to employer's business, (2) employee would have been entitled to a 1040 deduction, (3) business use must be substantiated with records, and (4) certain benefits have additional specific requirements, i.e., employer-provided vehicles or clothing. (Taxable Fringe Benefit Guide, pg 6)

- (1) Benefit must relate to employer's business self explanatory.
- (2) Employee would have been entitled to a 1040 deduction (under section 162 or 167)
  - a. IRC 162 (Trade or business expenses) there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business... (IRC 162(a))

- i. Travel expenses defined for tax purposes, travel expenses are the ordinary and necessary expenses of traveling away from home for your business, profession, or job. An ordinary expense is one that is common and accepted n your field of trade, business or profession. A necessary expense is one that is helpful and appropriate for your business. An expense does not have to be required to be considered necessary. (Publication 463 – Travel, Entertainment, Gift, and Car Expenses, pg 3) Traveling expenses include travel fares, meals and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. (Reg. 1.162-2(a)) Expenses paid or incurred by a taxpayer in attending a convention or other meeting may constitute an ordinary and necessary business expense under section 162 depending upon the facts and circumstances of each case. The allowance of deductions for such expenses will depend upon whether there is a sufficient relationship between the taxpayer's trade or business and his attendance at the convention or other meeting so that he is benefiting or advancing the interests of his trade or business by such attendance. (Reg. 1.162-2(d))
  - 1. Traveling away from home you are traveling away from home if: (1) your duties require you to be away from the general area of your tax home substantially longer than an ordinary day's work, and (2) you need to sleep or rest to meet the demands of your work while away from home. (Publication 463 Travel, Entertainment, Gift, and Car Expenses, pg 3)
    - a. Tax home generally, your tax home is your regular place of business or post of duty, regardless of where you maintain your family home. It includes the entire city or general area in which your business or work is located. (Publication 463 Travel, Entertainment, Gift, and Car Expenses, pg 3)

### b. IRC 167 (Depreciation)

- (3) Business use must be substantiated with records reimbursements or allowances for these expenses are deductible expenses if they are provided under an accountable plan. (RIA, Payroll Guide, Explanation and Analysis, 3805-Traveling expenses)
  - a. Accountable plan an accountable plan is a reimbursement or other expense allowance arrangement that meets three requirements: (1) there is a business connection, (2) there is substantiation, and (3) amounts in excess of expenses are returned to the employer. Reimbursements or advances made under an accountable plan are tax-

free. (RIA, Payroll Guide, Explanation and Analysis, 3805-Traveling expenses)

- i. Business connection reimbursements or advances meet the business connection requirement if they were paid or incurred by an employee in connection with services performed by the employee for the employer. These expenses must be allowable as deductions under code sec. 161 to code sec. 197. If wages and reimbursements or allowances are combined in a single payment, they must be separately and specifically identified. (RIA, Payroll Guide, Explanation and Analysis, 3805-Traveling expenses)
- ii. Substantiation no deduction is allowed for any travel expenses away from home unless the taxpayer substantiates, within a reasonable and specified period of time, the amount, time, place, and business purpose of the expense. A taxpayer must substantiate each element of a business expense or use. Written records at or near the time of expense or use are the best evidence. To satisfy the adequate records' requirement, the taxpayer must keep an account book, diary, log, statement of expenses, trip sheet, time and expense report, or other similar record. (RIA, Payroll Guide, Explanation and Analysis, 3805-Traveling expenses)
- iii. Returning excess amounts in general, a qualifying arrangement must require the employee to return, within a reasonable and specified period of time, any amount paid in excess of the substantiated amounts. (RIA, Payroll Guide, Explanation and Analysis, 3805-Traveling expenses)
- (4) Certain benefits have additional specific requirements not applicable in this situation.

# **Taxability of Lodging**

There are two Internal Revenue Codes (IRC) that allow an employer to exclude allowances or reimbursements for lodging as taxable income to an employee. The first is IRC 119 (Meals or lodging furnished for the convenience of the employer); the second is IRC 132 (Certain fringe benefits). In order to use IRC 132, the benefit in question cannot be covered by any other IRC.

To use IRC 119, there are three criteria that must be met or the IRC cannot be used. The three criteria are: (1) on the employer's premises (generally means the place of employment of the employee), (2) for the convenience of the employer (lodging will be regarded as furnished to enable the employee properly to perform the duties of his employment when, for example, the lodging is furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required of him unless he is furnished such lodging), and (3) a condition of employment (lodging is a condition of employment if the employee is required to accept lodging in order to enable him or her to perform properly the duties of his employment). If those three criteria cannot be met exactly, then the employer can consider IRC 132.

There are several types of fringe benefits in IRC 132, the one covering lodging is Working Condition Fringe Benefits. To use IRC 132, Working Condition Fringe Benefits, there are four criteria that must be met or the IRC cannot be used. The four criteria are: (1) benefit must relate to employer's business, (2) employee would have been entitled to a 1040 deduction (Employee would have been entitled to a 1040 deduction (under section 162 or 167)), (3) business use must be substantiated with records (reimbursements or allowances for these expenses are deductible expenses if they are provided under an accountable plan), and (4) certain benefits have additional specific requirements, i.e., employer-provided vehicles or clothing. IRC 162 (Trade or business expenses) allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including – (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business... Traveling expenses are the ordinary and necessary expenses of traveling away from home for your business, profession, or job. Traveling expenses include travel fares, meals and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. To be considered traveling away from home (1) your duties require you to be away from the general area of your tax home substantially longer than an ordinary day's work, and (2) you need to sleep or rest to meet the demands of your work while away from home. And, tax home is defined as your regular place of business or post of duty, regardless of where you maintain your family home. It includes the entire city or general area in which your business or work is located.

IRC 119 is the first IRC to look at for taxability of lodging exclusions. If the situation does not fit under IRC 119, then IRC 132 can be considered. If the situation does not fall under IRC 132 also, then the benefit is taxable to the employee.